

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF OHIO

Tyre Martel Smith,	:	CASE NO. 1:04 cv 687
	:	1:02 cr 505
Plaintiff,	:	
	:	
vs.	:	Judgment
	:	
United States of America,	:	
	:	
Defendant.	:	
	:	

JAMES S. GWIN, UNITED STATES DISTRICT JUDGE:

Pending before the Court is *pro se* Petitioner Tyre M. Smith's motion pursuant to 28 U.S.C. § 2255, to vacate, set aside, or correct his sentence [Doc. 1]. Respondent United States of America filed an opposition to the motion [Doc. 11]. Magistrate Judge George J. Limbert recommended that the Court deny Petitioner's § 2255 motion and dismiss the motion with prejudice. The Petitioner filed no objection to Magistrate Judge Limbert's Report and Recommendation. Upon an independent review of the record, this Court **DENIES** Petitioner Smith's motion to vacate, set aside, or correct his sentence under § 2255. The reasons for the denial are set out in the accompanying Memorandum, Opinion and Order.

Further, this Court certifies, pursuant to 28 U.S.C. § 1915(a)(3), that an appeal from this decision could not be taken in good faith, and that there is no basis upon which to issue a certificate of appealability. 28 U.S.C. § 2253; Fed. R. App. P. 22(b).

Accordingly, this action is terminated under Federal Rule of Civil Procedure 58.

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Gwin, J.

IT IS SO ORDERED.

Dated: April 29, 2005

s/ *James S. Gwin*
JAMES S. GWIN
UNITED STATES DISTRICT JUDGE